

Reimagining Legal Aid: A Political Critique of Access to Justice in Privatized Welfare States

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ABSTRACT

This study aims to examine the political and ideological transformations of legal aid systems within privatized welfare states and critique their implications for equitable access to justice. This study adopts a descriptive analysis method within the framework of a narrative review. It synthesizes academic literature, policy reports, and critical essays published between 2019 and 2024, focusing on countries such as the United Kingdom, Canada, Australia, and Nordic welfare states. Literature was selected from interdisciplinary sources in law, sociology, political science, and public policy through purposive sampling. Thematic content analysis was used to identify recurring patterns related to the restructuring of legal aid. The review reveals that legal aid has undergone significant transformation under neoliberal welfare regimes. Key challenges include chronic underfunding, marketization through outsourcing and pro bono substitution, restrictive eligibility criteria, and geographic and demographic disparities in service provision. These changes have disproportionately affected marginalized populations, leading to a fragmented and exclusionary justice system. Legal aid has shifted from a public entitlement rooted in social citizenship to a conditional service governed by austerity and managerialism. Legal aid must be reimagined as a democratic institution rather than a residual safety net. Reversing its decline requires a fundamental shift in how justice is conceptualized and delivered—one that centers equity, public responsibility, and participatory access. Legal aid should be restored as a site of collective empowerment and structural inclusion within a just society.

Keywords: legal aid, access to justice, neoliberalism, privatized welfare, social citizenship, inequality, legal empowerment.

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1. Introduction

The erosion of legal aid services in many industrialized democracies represents one of the most urgent yet underexamined dimensions of the broader retrenchment of the welfare state. In the context of privatized welfare regimes, the promise of equal access to justice has been increasingly subordinated to market logic and budgetary constraints. This shift is not

merely administrative—it carries profound implications for the political legitimacy of democratic institutions. At a time when social inequality is deepening and public trust in legal institutions is waning, reimagining legal aid requires critical attention to the ideologies and structures that have shaped its contemporary form. Legal aid, once considered a pillar of social citizenship, now exists in a precarious state—fragmented,



underfunded, and often inaccessible to those who need it most.

Legal aid refers to publicly funded legal services intended to ensure that all individuals, regardless of economic status, can access legal representation and protection under the law. It is a practical embodiment of the principle of access to justice, which posits that justice systems should be available, affordable, and effective for all members of society. Access to justice extends beyond courtroom procedures and touches upon the broader capacity of individuals to assert their rights, seek remedies, and engage meaningfully with legal institutions. In neoliberal political economies, however, both legal aid and access to justice have been progressively reframed as contingent services rather than guaranteed rights. Privatized welfare, as it relates to legal services, involves a policy shift whereby the state transfers responsibility for legal representation to private providers, non-governmental organizations, or conditional schemes, thereby undermining the universality and equity of justice provision. Neoliberalism, understood as a political rationality that privileges individual responsibility, market efficiency, and limited government intervention, has transformed the welfare state into a site of discipline rather than solidarity. Under such a regime, legal aid becomes a rationed benefit, subject to eligibility thresholds and bureaucratic hurdles rather than a social entitlement.

This review examines how legal aid has been restructured in advanced capitalist democracies through the lens of political critique. The countries selected for analysis include the United Kingdom, Australia, Canada, the Nordic states, and selected EU member states—jurisdictions where legal aid was historically robust but has undergone significant reform over the past two decades. These reforms are often framed in technocratic terms—efficiency, cost-control, modernization—but they conceal a deeper ideological transformation in the role of the state. In Australia, for example, the expansion of welfare conditionality has drastically altered access to social services, including legal assistance, especially for marginalized groups such as Indigenous communities and low-income women (Parsell et al., 2020). In Finland, the paradox of subsidized housing policies that appear generous on the surface but are governed by neoliberal austerity principles offers a relevant parallel to the

contradictions present in legal aid provision (Lilius & Lapintie, 2020).

The temporal scope of the review is limited to the period between 2019 and 2024, a timeframe that encompasses critical developments including intensified welfare retrenchment, the global economic aftershocks of the COVID-19 pandemic, and growing public debates over state responsibility and justice. These years have also witnessed renewed scholarly attention to the intersections of care, rights, and political agency within and beyond the boundaries of state-led welfare systems (Portella, 2024). The review draws upon interdisciplinary literature in law, political science, sociology, and critical theory, including recent critiques of welfare discourse in both the Global North and South (Biswas & Sambo, 2024). By integrating empirical insights with theoretical arguments, this review seeks to offer a politically grounded critique of how access to justice is being redefined in the era of privatized welfare. The guiding questions of this review are as follows: How have legal aid systems been transformed under neoliberal welfare regimes? What are the political and ideological logics that underpin these changes? Who benefits and who is excluded under the current configurations of access to justice? And finally, how might legal aid be reimagined to reflect principles of equity, dignity, and democratic participation? These questions are not only academic—they are vital for informing legal reform, social policy, and collective struggles for rights and recognition.

This article proceeds in several stages. Following this introduction, the theoretical framework will outline the dominant paradigms in legal and political theory relevant to understanding access to justice and welfare restructuring. It will highlight the contributions of Rawlsian justice, critical legal studies, Foucauldian governmentality, and Marxist state theory in critiquing the commodification of legal services. The methodology section will explain the narrative review process and descriptive analytical method used in selecting and synthesizing the literature. The historical and political context section will trace the evolution of legal aid systems, with attention to how different welfare state models have influenced legal entitlements. The subsequent section on contemporary challenges will identify and analyze key themes such as underfunding, bureaucratic obstacles, and privatization. A separate

section will offer a political critique of legal aid in neoliberal contexts, drawing attention to the ideological work performed by technocratic reforms. Finally, the article will conclude with normative reflections on reimagining legal aid as a public good and site of democratic possibility.

2. Methodology

This study adopts a descriptive analytical method within the framework of a scientific narrative review. The aim is to explore and critique how access to justice has been restructured and, in many cases, constrained within the context of privatized welfare states. The narrative review format allows for an in-depth examination of scholarly literature, legal reports, policy documents, and critical commentaries to offer a comprehensive understanding of the socio-political transformations affecting legal aid systems. The focus is on unpacking the ideological shifts, structural reforms, and legal-institutional changes that have redefined the concept of justice accessibility, particularly for marginalized populations.

In gathering the relevant literature, a purposive search strategy was employed to ensure the inclusion of high-quality and thematically aligned sources. The search was conducted across multiple academic databases, including JSTOR, Scopus, Web of Science, and HeinOnline, as well as open-access platforms such as SSRN and Google Scholar. The keywords guiding the search process included combinations of terms such as "legal aid," "access to justice," "welfare state," "neoliberalism," "privatization," "legal services," and "austerity." The literature was limited to scholarly articles, peer-reviewed journals, legal and policy reports, and critical essays published between 2019 and 2024. This temporal delimitation was intended to capture the most recent transformations in welfare governance and justice systems, particularly in the aftermath of global economic, social, and political developments such as the COVID-19 pandemic and the continued expansion of neoliberal policy regimes.

The selection criteria prioritized sources that engaged with both theoretical and empirical dimensions of legal aid reforms. Special attention was paid to interdisciplinary studies from fields such as law, political science, sociology, and public administration that critically examined the restructuring of public services

and legal infrastructures. Sources addressing experiences from advanced industrialized democracies, particularly the United Kingdom, Canada, Australia, Nordic countries, and selected EU member states, were emphasized in order to draw comparative insights across different models of welfare and legal governance. Case studies, where available, were included to highlight the tangible effects of policy reforms on vulnerable populations, such as low-income individuals, immigrants, women, and people with disabilities.

To synthesize the findings, a thematic content analysis approach was used. Each selected text was carefully read, coded, and categorized into key themes that emerged inductively through engagement with the literature. These themes included the underfunding of legal aid systems, market-based approaches to justice provision, bureaucratic and eligibility-related barriers to accessing legal assistance, and the depoliticization of legal services under managerial reforms. The analysis did not seek to quantify trends but instead aimed to reveal the underlying political logics and normative assumptions shaping the transformation of legal aid in privatized welfare contexts. This method of synthesis allows for a critical, integrative narrative that moves beyond mere description to offer a political critique of the shifting relationship between the state, law, and social rights.

3. Theoretical Framework

The provision of legal aid and the broader concept of access to justice are deeply embedded within competing theories of justice, state responsibility, and political power. One influential starting point is John Rawls's theory of justice as fairness, which emphasizes the importance of ensuring that the least advantaged members of society have access to basic liberties and opportunities. From this perspective, legal aid functions as a distributive mechanism that compensates for structural inequalities and affirms the moral legitimacy of the legal system. Yet Rawlsian justice, with its focus on ideal theory, has been critiqued for underestimating the political dimensions of access to justice—particularly how power operates through legal and bureaucratic institutions to maintain social hierarchies.

Critical legal studies (CLS) offers an important counterpoint by emphasizing the indeterminacy of law and its entanglement with social, economic, and political

forces. CLS scholars argue that law is not a neutral arbiter of rights but a terrain of contestation where dominant interests are often codified as universal norms. In the context of legal aid, this perspective draws attention to how eligibility criteria, procedural rules, and funding decisions serve to discipline and exclude marginalized populations rather than empower them. This critique aligns with broader concerns raised by feminist theorists who examine how the state's selective distribution of care and legal recognition reflects deeper gendered and racialized power structures (Portella, 2024). Similarly, intersectional critiques of welfare reform reveal how disabled women of color, for example, are often rendered hyper-visible as burdens or invisible as claimants, depending on shifting political narratives (Kim, 2021).

Foucauldian governmentality provides another lens through which to understand the restructuring of legal aid. According to Michel Foucault, modern power is exercised not merely through coercive institutions but through the production of norms, knowledge, and administrative rationalities. In neoliberal welfare states, governmentality manifests through managerial logics that prioritize audit, efficiency, and risk management over substantive justice. Legal aid programs are increasingly subjected to performance metrics and cost-benefit analyses that transform rights into deliverables. This rationality is evident in how legal aid clients are constructed as passive service users whose access must be justified through means tests and behavioral compliance. As argued by critics of neoliberal governance, such practices not only depoliticize legal claims but also reframe poverty and exclusion as individual failings rather than structural injustices (Hooijer & King, 2021).

A Marxist theory of the state offers yet another perspective by situating legal aid within the broader dynamics of capitalist reproduction and class struggle. Legal services, like other forms of welfare, are provided not out of benevolence but as part of a broader strategy to stabilize labor relations and maintain social order. Under neoliberalism, however, the state withdraws from these responsibilities in favor of market mechanisms and privatization. As noted by scholars analyzing the decline of social citizenship, this shift results in a fragmented and residual welfare regime that serves primarily to manage poverty rather than eliminate it (Balaji, 2024). In this

context, legal aid becomes a conditional and often inadequate response to systemic inequalities, rather than a meaningful expression of justice.

The restructuring of legal aid cannot be fully understood without acknowledging the ideological and political work that underpins it. As noted in recent scholarship, neoliberal reforms often appear apolitical or technocratic, masking the normative choices that prioritize fiscal discipline over social solidarity (Verovšek, 2021). For example, legal aid cuts are frequently justified by appeals to budgetary efficiency or the need to reduce "dependency," echoing broader discourses of austerity that frame welfare recipients as morally suspect. These narratives are not merely rhetorical; they shape the design and delivery of services in ways that entrench inequality and disempower vulnerable groups.

The shift from universal to targeted welfare services is a hallmark of this transformation. Universalism, once considered a cornerstone of democratic welfare states, is increasingly replaced by means-tested and conditional programs that stratify access based on need, behavior, or perceived deservingness. Legal aid schemes reflect this shift through the proliferation of narrow eligibility criteria, bureaucratic hurdles, and subcontracting to non-state providers. As studies on welfare conditionality in Australia have shown, such mechanisms often function as tools of surveillance and control rather than support (Parsell et al., 2020). The fragmentation of legal services into competitive markets also undermines the coherence and accountability of justice provision, creating significant gaps in coverage and continuity.

In sum, the theoretical framework adopted in this review integrates insights from liberal, critical, and radical traditions to interrogate the political foundations of legal aid. By viewing access to justice not as a neutral process but as a site of ideological struggle, it becomes possible to critically assess the consequences of privatizing legal assistance and to imagine alternative models grounded in solidarity, equity, and collective rights. This framework informs the subsequent analysis of legal aid reforms across jurisdictions and helps illuminate the deeper tensions between democracy, justice, and neoliberal governance.

4. Historical and Political Context of Legal Aid

The historical evolution of legal aid in welfare states reflects broader shifts in political ideology, state responsibility, and conceptions of citizenship. In the post-war period, particularly during the 1950s through the 1970s, legal aid became institutionalized as an essential component of the welfare state in countries such as the United Kingdom, Canada, Australia, and the Nordic states. Legal aid during this era was not merely an adjunct to the justice system but a manifestation of social citizenship—a commitment by the state to ensure that all individuals, regardless of socioeconomic status, had equal access to legal recourse. In the United Kingdom, the Legal Aid and Advice Act of 1949 marked a foundational moment by formally integrating legal assistance into the architecture of the modern welfare state. It was driven by the belief that legal remedies should not be the privilege of the wealthy, but a right accessible to every citizen.

Similarly, in Canada, legal aid systems developed through provincial initiatives supported by federal funding, underscoring a cooperative vision of justice as a shared governmental obligation. In Australia, legal aid emerged through both state and commonwealth support, gradually expanding through the 1970s to address civil and criminal matters for low-income individuals. These developments were anchored in the broader political ethos of the time, where the welfare state was seen as a guarantor of equality, inclusion, and collective well-being. Legal aid, in this sense, was closely tied to the notion of state legitimacy and the ethical responsibility to enable legal empowerment for all sectors of society.

In the Nordic countries, legal aid was integrated into expansive welfare regimes characterized by high levels of public spending, universal coverage, and strong redistributive mechanisms. Finland, for example, developed a legal aid model that was consistent with its commitment to egalitarianism and social justice, although in later years this model would face internal contradictions when subjected to neoliberal scrutiny (Lilius & Lapintie, 2020). During this earlier period, legal aid was considered a public good, and its administration remained firmly within the domain of the state. It was understood as a necessary function for the maintenance of democratic governance and legal equality.

However, the 1980s and 1990s introduced a series of ideological and policy shifts that began to destabilize this

model. The global ascendance of neoliberalism, with its emphasis on market-based solutions, austerity, and individual responsibility, profoundly altered the landscape of public service provision. Legal aid, along with other welfare programs, was increasingly framed as a cost burden rather than a democratic necessity. In the United Kingdom, the Legal Aid Act of 1988 began the process of restructuring service delivery through managerial reforms, while subsequent policies during the 2010s under the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) led to severe cutbacks in eligibility and scope. These changes were justified on fiscal grounds but had devastating consequences for vulnerable populations.

Australia followed a similar path, with legal aid services subjected to funding freezes, performance-based contracts, and increased reliance on pro bono contributions. As described in critiques of Australia's welfare reforms, the shift toward conditionality and outsourcing mirrored transformations across other sectors of social policy, eroding the universality that once defined legal aid (Parsell et al., 2020). In Canada, federal contributions to legal aid began to decline in the late 1990s, leading to provincial disparities in service access and quality. These changes effectively created a tiered system in which some citizens retained access to legal representation while others were excluded due to administrative or financial barriers.

One of the most notable turning points in the political history of legal aid was the embrace of outsourcing. The state began contracting legal services to private law firms, non-profits, and community organizations under competitive bidding processes, ostensibly to promote efficiency. However, this practice undermined the stability and integrity of legal aid infrastructure, introducing fragmentation and inconsistency. In many cases, outsourced providers were forced to work under strict cost constraints, limiting the time and resources they could allocate to each case.

These neoliberal reforms did not occur in a vacuum but were embedded in broader discourses that recast poverty as personal failure and rights as conditional entitlements. As noted in critical accounts of welfare restructuring, these shifts reflect a transformation in the role of the state—from a guarantor of collective well-being to a regulator of market participation (Hooijer & King, 2021). Legal aid, once emblematic of social

solidarity, was gradually reconfigured as a residual safety net—available only to the most "deserving" and subject to stringent oversight. This political trajectory laid the groundwork for the contemporary challenges that define access to justice in the present day.

5. Current Challenges in Access to Justice

Access to justice in contemporary welfare states is confronted by a constellation of structural and political challenges that severely limit the ability of marginalized populations to engage with legal systems effectively. Among the most pressing of these challenges is the chronic underfunding and rationing of legal aid services. Across jurisdictions such as the UK, Australia, and parts of the United States and Canada, public expenditures on legal aid have stagnated or declined in real terms, even as demand has increased. Legal aid budgets are increasingly subjected to austerity measures that prioritize short-term fiscal savings over long-term justice outcomes. In many cases, funding cuts have resulted in the narrowing of legal aid coverage to exclude important areas such as family law, housing, immigration, and social welfare disputes. This underfunding not only limits service availability but also undermines the quality of representation, as legal aid lawyers are forced to manage heavy caseloads with minimal support.

Parallel to funding reductions is the trend of marketization, wherein legal services are outsourced to private firms and non-governmental organizations operating under competitive contracts. This model introduces a profit incentive into what was once a public service, altering professional norms and priorities. In jurisdictions like Australia, the rise of pro bono substitution has been framed as a way to fill service gaps; however, this reliance on voluntary or charitable legal work fails to ensure systematic or equitable coverage (Parsell et al., 2020). Moreover, market-driven legal aid regimes often prioritize cost-effectiveness over justice, encouraging providers to take on simpler, high-volume cases while avoiding complex or time-intensive matters. This approach reinforces a two-tiered system, where access to robust legal representation becomes contingent on financial means or institutional connections.

Administrative burdens and eligibility barriers further complicate access. The process of applying for legal aid

frequently involves intrusive means testing, stringent documentation requirements, and long wait times, all of which deter applicants. These procedural hurdles reflect a broader shift toward bureaucratic gatekeeping, in which services are rationed not only by budget but by managerial discretion. As critical welfare scholars have noted, such mechanisms operate as forms of discipline, framing claimants as potential abusers of the system rather than rights-bearing individuals (Hooijer & King, 2021). In Finland, for example, the paradoxical imaginaries surrounding subsidized services highlight how administrative complexity can serve as a covert strategy of exclusion, reinforcing neoliberal narratives of individual responsibility (Lilius & Lapintie, 2020).

Geographic and demographic disparities exacerbate these challenges, as access to legal aid is often unevenly distributed across urban and rural areas. In many regions, legal aid offices are concentrated in metropolitan centers, leaving rural populations with limited or no access to in-person legal consultation. These spatial inequalities are compounded by social and cultural barriers, including language differences, digital illiteracy, and distrust of legal institutions among certain communities. Racialized and gendered dimensions of exclusion are also prevalent. Immigrants, refugees, single mothers, and disabled individuals face intersecting barriers that limit their ability to navigate legal processes. In the United States, critiques of welfare discourses have highlighted how stigmatizing narratives around the "welfare queen" continue to shape legal aid eligibility criteria and public perceptions (Kim, 2021). These narratives justify restrictive policies by positioning marginalized claimants as undeserving, thus reinforcing social hierarchies and systemic injustice.

The cumulative impact of these challenges is especially severe for vulnerable populations. The commodification of legal services means that those most in need of representation are least likely to receive it. Marginalized individuals often face legal problems that are complex, multi-layered, and embedded in broader social contexts—issues that require holistic and sustained engagement rather than transactional solutions. Yet under the current system, legal aid providers are incentivized to handle such cases in a minimal, fragmented fashion. As feminist critiques of welfare state politics have argued, this institutional logic fails to recognize the relational and intersectional nature of

justice needs (Portella, 2024). Instead of empowering claimants, the system frequently re-traumatizes them through procedural indifference, adversarial treatment, and limited remedies.

Recent scholarship has begun to push back against these trends by calling for a re-politicization of legal aid and access to justice. Scholars examining legal reform in both Northern and Southern contexts have emphasized the need to move beyond technocratic fixes and recognize the structural injustices that shape legal exclusion (Biswas & Sambo, 2024). Others have pointed to the potential of alternative models rooted in community lawyering, participatory justice, and grassroots mobilization to reclaim legal aid as a tool for empowerment rather than containment (Ana, 2020). These critiques underscore the importance of framing legal aid not simply as a service but as a site of political struggle—one that reflects broader conflicts over rights, recognition, and state accountability.

In sum, the current challenges facing legal aid systems are not isolated administrative failures but the logical outcomes of a political paradigm that prioritizes market efficiency over democratic equity. The cumulative effect of underfunding, privatization, bureaucratization, and social exclusion is a legal system that increasingly serves the powerful while marginalizing those with the greatest need for justice. Confronting these challenges requires not only institutional reform but a fundamental rethinking of the political and moral foundations of legal aid in a just society.

6. Conclusion

The dismantling and reconfiguration of legal aid across advanced capitalist democracies reflect more than just policy adjustments—they are symptomatic of a deeper transformation in the relationship between the individual, the state, and the law. In privatized welfare states, where the logic of the market increasingly dominates public service provision, legal aid has lost much of its foundational identity as a social right and a mechanism for achieving justice. Once a pillar of social citizenship and democratic inclusion, it has become a conditional benefit, rationed according to means, behavior, and bureaucratic discretion. The consequences of this shift are profound, not only for the individuals and communities who struggle to assert their rights but also

for the democratic legitimacy of legal systems that purport to serve all equally.

Throughout this article, it has been shown that the retreat of the state from its commitment to universal legal aid has taken multiple forms—budgetary austerity, outsourcing, the imposition of administrative hurdles, and the devolution of responsibility to private and non-profit actors. Each of these strategies serves to fragment legal services, diminish their accessibility, and obscure the structural causes of legal exclusion. The prevailing model of legal aid provision no longer prioritizes justice as an outcome; instead, it favors managerial efficiency, cost containment, and risk aversion. This transformation is not neutral. It disproportionately affects the most vulnerable groups in society, including immigrants, single mothers, racialized minorities, disabled individuals, and those living in rural areas.

The political critique advanced in this review emphasizes the need to move beyond technical reforms and instead confront the ideological underpinnings of current legal aid policies. If legal aid is to fulfill its original promise, it must be reimagined not as a marginal or discretionary service, but as a core institution of democratic life. This requires rejecting the logic of commodification and embracing a vision of justice that is relational, inclusive, and grounded in solidarity. Legal empowerment cannot be achieved through fragmented, market-based interventions; it demands sustained public investment, equitable structures of access, and a reinvigoration of the public sphere.

Moreover, reimagining legal aid means recentering the voices and experiences of those who are most directly impacted by its absence. A rights-based and participatory model of legal services should be designed not only to resolve disputes but to challenge the systemic injustices that give rise to legal need in the first place. Legal aid must become part of a broader project of social transformation—one that affirms the dignity and agency of all individuals, regardless of economic status.

To achieve this, scholars, practitioners, and policymakers must reject the narrow framing of legal aid as a budgetary burden and instead reclaim it as a democratic imperative. A just society does not tolerate the exclusion of its most vulnerable members from the protections and benefits of the legal system. Ensuring genuine access to justice requires more than maintaining the appearance of fairness; it demands a substantive

commitment to equality, inclusion, and public responsibility. This article has sought to illuminate the political and ideological dynamics that have reshaped legal aid in the neoliberal era and to offer a conceptual framework for imagining alternatives that are both more just and more democratic. The task ahead is to transform these insights into action—legal, political, and collective.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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Declaration of Interest

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Ethical Considerations

In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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